



## County of Hawai'i

### WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

JUL 18 2013

Rodney and Lorrie Diamond  
HC 3 Box 14073  
Kea'au, HI 96749

Dear Mr. and Mrs. Diamond:

Special Permit Application (SPP 13-000150)

Applicant: Rodney and Lorrie Diamond

Request: To Allow the Establishment of a Baseyard for a Drilling Company  
With Related Improvements

Tax Map Key: 1-5-017:112

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The Windward Planning Commission, at its duly held public hearing on July 11, 2013, approved the adoption of the enclosed Findings of Fact, Conclusions of Law, and Decision and Order regarding the above-referenced application for a special permit to allow the establishment of a baseyard for parking, storage and maintenance of well drilling equipment, materials and supplies on a 0.43-acre portion of a one-acre parcel situated within the State Land Use Agricultural District. The property is located between Paradise Drive and Maku'u Drive on the makai (northeast) side of 32<sup>nd</sup> Avenue, approximately 1,500 feet from its intersection with Paradise Drive, Hawaiian Paradise Park Subdivision, Kea'au, Puna, Hawai'i.

If you have questions regarding this matter, please contact Daryn Arai of the Planning Department at (808) 961-8288.

Sincerely,

Wallace A. Ishibashi, Jr., Chairman  
Windward Planning Commission

Ldiamondspp13-000150wpc

Enclosure

cc/enc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
State Land Use Commission  
Mr. Gilbert Bailado, GIS Analyst  
Hawaiian Paradise Park CA

*Hawai'i County is an Equal Opportunity Provider and Employer*

JUL 18 2013

BEFORE THE COUNTY OF HAWAI'I  
WINDWARD PLANNING COMMISSION

In the matter of the Contested Case  
Hearing of

RODNEY AND LORRIE DIAMOND

Request: Allow establishment of a baseyard for Rodney K. Diamond Construction for parking, storage and maintenance of well drilling equipment, materials and supplies on a 0.43-acre portion of a one-acre parcel of land situated within the State Land Use Agricultural District located on 32<sup>nd</sup> Avenue near Paradise Drive in Hawaiian Paradise Park Subdivision, Kea'au, Puna, Hawai'i, Tax Map Key: (3) 1-5-017:112.

SPP No. 13-000150

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

BACKGROUND

RODNEY AND LORRIE DIAMOND (hereinafter referred to as "Applicants") submitted an application for a Special Permit on March 14, 2013, to allow the establishment of a baseyard for Rodney K. Diamond Construction for parking, storage and maintenance of well drilling equipment, materials and supplies on a 0.43-acre portion of a one-acre parcel of land situated within the State Land Use Agricultural District. The Property is owned by the Applicants and is situated along the northeast (makai) side of 32<sup>nd</sup> Avenue near Paradise Drive in Hawaiian Paradise Park (a.k.a. "HPP") Subdivision, Kea'au, Puna, Hawai'i, Tax Map Key: (3) 1-5-017:112.

The Applicants provided statutory notice to the surrounding property owners of the June 6, 2013 Windward Planning Commission (referred to as "Commission") hearing. None of

the notified persons filed a petition for standing in a contested case. The Planning Director provided the Commission with a negative recommendation regarding Applicants' application.

The Commission as a whole conducted the contested case hearing on the Special Permit application with Wallace Ishibashi, Jr. as the Presiding Officer.

The Commission reviewed evidence and heard testimony at the contested case hearing held on June 6, 2013 at the County of Hawai'i, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, 96720. Applicants appeared *pro se*; Deputy Corporation Counsel William Brillhante appeared for the Hawai'i County Planning Department (referred to as "Department") and it's Director (referred to as "Director"). Applicants attended and testified throughout the hearing.

At the hearing, Applicants agreed that they had no need of any further contested case procedures for a full and fair hearing, having had full and sufficient opportunity to present evidence, including documentary evidence and witnesses, and had no objection to the public hearing being closed.

The Commission, having considered the entire record, and having heard and considered the evidence and arguments, makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. The Property is located along the along the northeast (makai) side of 32<sup>nd</sup> Avenue approximately 1,500 feet from its intersection with Paradise Drive in Hawaiian Paradise Park Subdivision, Kea'au, Puna, Hawai'i, Tax Map Key: (3) 1-5-017:112.
2. Applicants proposed to establish or legitimize a baseyard for Rodney K. Diamond Construction for parking, storage and maintenance of well drilling equipment, materials and

supplies on a 0.43-acre portion of the subject rectangular, one-acre parcel of land situated within the State Land Use Agricultural District.

3. The Property is owned by the Applicants.
4. The proposed baseyard would include the following:
  - Covered parking for two (2) drill rig vehicles and two (2) drilling support trucks.
  - Parking for a farm tractor, front end loader, ATV, and a trailer used for maintaining an oil palm tree farm located in Kea'au.
  - Storage of materials used for the drilling business including:
    - Metal well casing;
    - Sand and gravel used for well construction;
    - Pumps, PVC pipe, pressure tanks;
    - Assorted pipe fittings, plumbing, and electrical supplies used in well and water system construction and repair;
    - Food grade, biodegradable drilling soap;
    - Fuel and lubricant storage for drilling and farm vehicles.
    - Only the drilling business is done for clients, the rest of the equipment is used for Applicants' own agricultural or personal uses.
    - Other operational details and information included within the Planning Director's Background Report as Planning Department Exhibit 1 – Special Permit Application

5. **Reasons for the Request:** According to the applicant, having the parking, storage and maintenance facility located at the back of their residence will eliminate their need to commute to work by car, allows for more productive work scheduling, provides a more secure setting for parking their drilling and farm equipment away from opportunities for theft and vandalism, and is more economical than the alternative, which is to rent or purchase an off-site parking and storage facility.

6. **Hours of Operation:** Hours of operation are proposed to be from 8:00 a.m. to 5:00 p.m., Monday through Friday.

7. **Employees:** According to the applicant, the business is owner-operated with three (3) employees being the business owners. Two (2) of the employees live in the residence on the subject property and the third employee commutes to the property from Volcano Village.

8. **Notice of Violation:** Planning Department issued a Notice of Violation and Order (ZCV 2012-063E) to Rodney and Lorrie Diamond on April 23, 2012 for the operation of an unpermitted non-agricultural business on the subject property situated in the Agricultural zoning district. **(Planning Department Exhibit 2 – Notice of Violation Dated April 23, 2012).**

9. **State Land Use District:** Agricultural.

10. **County Zoning:** Agricultural (A-1a)

11. **GP LUPAG Map:** Rural.

12. **Puna Community Development Plan (CDP):** The Puna CDP was adopted by the Hawaii County Council, Ordinance No. 08 116, on September 10, 2008, and amended on November 4, 2010 by Ordinance No.10-104. Relating to this project, the plan proposes that further industrial development should occur on the sites currently designated for industrial uses in the General Plan LUPAG map, plus an additional area along 33rd street in Hawaiian Paradise Park, from Maku'u going toward Kea'au, where several businesses have already been permitted through the issuance of special permits. This area, which consists of 46 lots of 0.5 to 1.0 acre in size, should become a light industrial area only if the survey conducted by the Planning Department shows that lot owners want this changed and are willing to fund the infrastructure improvements necessary to create a light industrial area: road improvements, water, and thick landscaping to shield the site from Highway 130 and the residential lots abutting the site. The survey conducted by the Planning Department was inconclusive.

13. **Hawaiian Paradise Park Community Master Plan:** In 1995, the County Council passed Resolution No. 184-97 adopting the Hawaiian Paradise Park Community Master Plan as a planning guide for the County. Part of the plan included a concept map that identified a light industrial area of approximately 20 acres on Kaloli Drive and 14th Avenue.

14. **Hawaiian Paradise Park Community Master Plan Revision:** The Hawaiian Paradise Park Community Master Plan was revised in September of 2005, which included a statement that the 46 one-acre lots that front 33<sup>rd</sup> Avenue between Maku'u and Paradise Drive should be re-designated light industrial to reflect the original 1995 Master Plan proposal with modifications. The revised plan has not been adopted by ordinance or resolution.

15. **Special Management Area (SMA):** The property is not located within the Special Management Area (SMA) and is approximately four (4) miles from the coastline.

16. **Subject Property:** The subject property is 1.0-acre in size and is rectangular in shape. It is located at 15-1815 Ulahoa Ave (32<sup>nd</sup> Ave) in the Hawaiian Paradise Park Subdivision. The property is completely fenced with 6-foot white plastic fencing and improved with a dwelling, pool, greenhouses, and a covered storage area for equipment.

17. **Surrounding Zoning/Land Uses:** Immediate surrounding lands zoned A-1a and are predominantly improved with dwellings. The adjoining properties on the northwest and southeast side of the property are vacant. The nearest dwellings are located to the front and to the rear of the property. There have been several similar special permits approved on 33<sup>rd</sup> Avenue and Maku'u Drive. (refer to Finding of Fact No.26 -"Special Permits in the Area").

18. **U.S.D.A. Soil Type:** Pahoehoe (rLW), a miscellaneous land type. Pahoehoe lava has no soil covering and is typically bare of vegetation except for mosses and lichens.

19. **Land Study Bureau Soil Rating:** “E” or “Very Poor”. This is not well suited for traditional soil-based agricultural crops. The existing agricultural uses on the property were established using imported soil.

20. **ALISH Map:** Unclassified.

21. **FIRM:** Zone X, areas determined to be outside the 500-year flood plain.

22. **Floral and Fauna Resources:** No flora or fauna study was submitted with the application. The property has been improved with a dwelling, pool, greenhouses and a covered storage area. According to the applicant, the subject property includes introduced fruit trees, vegetable and herb gardens, and various introduced ornamental plants. The subject property does not have any high-value floral resources. Common birds such as Japanese White-eye, Northern Cardinal, Spotted Dove and Common Myna birds are seen on the subject property and none of these birds are listed or candidates for threatened or endangered species.

23. **Archaeological/Historical/Cultural Resources:** No archaeological survey was submitted with the application as the property is improved. The Department of Land and Natural Resources-State Historic Preservation Division issued a “no-effect” letter dated August 30, 2012 stating based on the history of land use, and the currently developed condition of the parcel, they believe that no historic properties will be affected.

24. **Public Access:** There is no public access to the mountains or the shoreline that traverses through the property.

25. **Valued Cultural Resources:** There is no evidence of traditional and customary Native Hawaiian rights being practiced on the property.

26. **Special Permits in the Vicinity:**

- **Excavation Tech, LLC:** Special Permit No. 1136, effective March 15, 2002, was issued for a contractor’s baseyard for heavy equipment storage and

excavation operation in the Orchidland Estates Subdivision along the mauka side of Keaau-Pahoa Road, approximately 700 feet Keaau side of Makuu Drive, TMK: 1-6-9: 237, 238, 239 & 240. The Special Permit was approved subject to a limited life of five (5) years from the effective date or upon new industrial zoned lands becoming available within an approximate four (4)-mile radius from the subject properties, within a reasonable period to effect the relocation, whichever occurs first. The applicant received an amendment in 2008 to allow an additional 5 years for the life of the permit until September of 2013.

- **Whitney Investment Trust/Mango Trust:** Special Permit No. 1184, effective December 16, 2002, was issued to legitimize a contractor's warehouse and baseyard for storing equipment and supplies in Hawaiian Paradise Park Subdivision on the east side (makai) of Keaau-Pahoa Road, approximately 700 feet Keaau side of Maku'u Drive, TMK: 1-5-16:170. The Special Permit was approved subject to a limited life of five (5) years from the effective date or upon new industrial zoned lands becoming available within an approximate four (4)-mile radius from the subject property, within a reasonable period to effect the relocation, whichever occurs first. The applicant received an amendment in 2008 to allow an additional 5 years for the life of the permit until October of 2013.
- **Walter M. Tavares, Jr.:** Special Permit No. 1212, effective June 20, 2003, was issued to allow the construction of a 2,500 –square foot building for the establishment of a towing and auto repair business. The property is located along the makai side of Uluhe Street (aka 33<sup>rd</sup> Avenue), approximately 1620 feet northwest (Kea'au direction) of Maku'u Drive, TMK: 1-5-16:148. The Special Permit was approved subject to a limited life of five (5) years or upon rezoning or upon new industrial zoned lands becoming available within an approximate 4-mile radius from the subject property, within a reasonable period to effect relocation, whichever occurs first. No extension of the permit shall be granted unless the road is paved to provide a 20-foot wide pavement within the 33<sup>rd</sup> Avenue right-of-way from Maku'u Drive to the subject property, meeting with the approval of the Hawaiian Paradise Park Homeowner's Association. In 2008, the applicant received approval for a 5-year time extension to the life of the permit



until October 2013. The road was paved with a 20-foot pavement width from Maku'u Drive to the applicant's property. In 2008, the applicant received approval for a 5-year time extension to the life of the permit until October 2013. The road was paved with a 20-foot pavement width from Maku'u Drive to the applicant's property.

- **Gregory J. Plescia:** Special Permit No. 05-007, effective June 3, 2005, was issued to allow the construction of a 2,400-square foot building for a certified (commercial) kitchen. The property is located along the makai side of Uluhe Street (aka 33<sup>rd</sup> Avenue), approximately 2,500 feet northwest of Maku'u Drive, TMK: 1-5-16:portion of 142. The Special Permit was approved subject to a limited life of five (5) years, or upon new industrial zoned lands or suitable sites developed under special permit within the LUPAG "medium density urban: or "industrial" areas becoming available within an approximate 4-mile radius from the subject property, within a reasonable period to effect relocation, whichever occurs first. No extension of the permit shall be granted unless the road is paved to provide a 20-foot wide pavement within the 33<sup>rd</sup> Avenue right-of-way from Maku'u Drive to the subject property, meeting with the approval of the Hawaiian Paradise Park Homeowner's Association. The applicant has not submitted for an amendment to allow additional time for the life of the permit.
- **Verne and Melody Wood:** Special Permit No. 2005-018, effective December 2, 2005, was issued to allow a contractor's warehouse and baseyard to facilitate the construction and servicing of water catchment systems. The property is located along the mauka side of Uluhe Street (aka 33<sup>rd</sup> Avenue), approximately 800 feet northwest of Maku'u Drive, TMK: 1-5-16: 167. The Special Permit was approved subject to a limited life of five (5) years, or upon new commercial or industrial zoned lands or suitable sites developed under special permit within the LUPAG "industrial" area becoming available within an approximate 4-mile radius from the subject property, within a reasonable period to effect relocation, whichever occurs first. No extension of the permit shall be granted unless the road is paved to provide a 20-foot wide pavement within the 33<sup>rd</sup> Avenue right-of-way from Maku'u Drive to the subject property, meeting with the approval of the Hawaiian

Paradise Park Homeowner's Association. In 2011, the applicant received approval for a 10-year time extension to the life of the permit until June 2021. The road was paved with a 20-foot pavement width from Maku'u Drive to the applicant's property.

- **Carnor Sumida:** Special Permit No. 2008-000053, effective June 6, 2008, was issued to allow the establishment of a baseyard for trucks and trailers on 0.9 acre of land. The property is located along the mauka side of Uluhe Street (aka 33<sup>rd</sup> Avenue), approximately 1,800 feet northwest of Maku'u Drive, on TMK: 1-5-16: 172. The life of the permit for the baseyard shall be for five (5) years from the effective date of this permit or upon new industrial zoned lands becoming available within an approximate four (4)-mile radius from the subject property, within a reasonable period to effect the relocation, whichever occurs first.

**(Planning Department Exhibit 3 – Map of Special Permits on 33<sup>rd</sup> Avenue)** The subject property is located on 32<sup>nd</sup> Avenue, one street away (or two lots) from the 33<sup>rd</sup> Avenue area identified as a proposed light industrial area in the Puna Community Development Plan, Section 5.2.4 (2008, as amended).

27. **Access:** Access to the property is from Keaau-Pahoa Road (Highway 130) onto Paradise Drive and 32<sup>nd</sup> Avenue. Paradise Drive has an approximate 20-foot wide pavement within a 60-foot right-of-way. Uhaloa Street (aka 32<sup>nd</sup> Avenue) is a private road with an approximately 20-foot wide gravel base within a 40-foot right-of-way.

28. **Water:** Water is available to the property through a private well.

29. **Wastewater:** Wastewater is disposed of via an existing cesspool.

30. **Other Utilities and Services:** Telephone and electrical services are available to the site. Police and Fire services are located in Pahoa, approximately four (4) miles from the site.

31. **Department of Public Works:** commented that: "All development-generated runoff shall be disposed of on-site and not directed toward any adjacent properties. A drainage

plan may be required by the Plan Approval process in accordance with Section 25-2-72 of the Hawaii County Code.” **(Planning Department Exhibit 4 – April 23, 2013 Memo)**

32. **Department of Water Supply:** had no objection to the application as the facility would not require county water service. **(Planning Department Exhibit 5 – April 22, 2013 Memo).**

33. **Department of Environmental Management:** had no comments. **(Planning Department Exhibit 6 – March 27, 2013 Memos).**

34. **Police Department:** did not anticipate any significant impact to traffic and/or public safety concerns. **(Planning Department Exhibit 7 – April 4, 2013 Memo).**

35. **Fire Department:** identified applicable requirements of the NFPA 1, UNIFORM FIRE CODE, 2006 EDITION. **(Planning Department Exhibit 8 – April 1, 2013 Memo)**

36. **Department of Land and Natural Resources-Land Division:** Engineering Division confirmed that the project site, in Flood Insurance Zone Map, Zone “X”, and that the National Flood Insurance Program has no regulations for development within Zone X. **(Planning Department Exhibit 9 – April 22, 2013 Letters).**

37. **Department of Health:** Noted that the existing wastewater system is adequate to serve the proposed project, and found no wastewater/environmental health concerns with regulatory implications. Also noted that construction activities must meet requirements of Hawaii Administrative Rules (“HAR”), Chapter 11-46, “Community Noise Control”, and Applicants must meet requirements of Department of Health Air Pollution Rules, Chapter 60.1, Title 11, for fugitive dust control. **(Planning Department Exhibit 10 – April 4, 2013 Memo).**

38. **Puna Community Development Plan Action Committee:** Noted “grave concerns regarding this application” and noted Puna Community Development Plan sections

3.1.3c.2 (“recommending denial of applications for zone changes for commercial or light industrial use on sites that are not within designated village/town centers”) and 5.2.4, “Industrial Zoning” “directs that further industrial development should occur on the sites currently designated in the General Plan LUPAG map plus three other locations. Among these three other locations is the area along 33<sup>rd</sup> street in Hawaiian Paradise Park from Maku‘u drive going toward Kea‘au. Several Special Permits have been previously granted for light industrial/baseyard type uses in this area.” Also that the “Land Use element of the Hawaiian Paradise Park Master Plan (September 2005) also identifies the above-referenced section of 33<sup>rd</sup> street and one of the 20-acre parcels at 14<sup>th</sup> and Kaloli Drive for light industrial use. . . . In view of the above and the fact that the subject property is in one of the most densely developed neighborhoods in HPP, we are extremely concerned with the potential for adverse impacts from the storage and use of hazardous materials, flammables and biohazards, as noted in the application. The approval of this application and the precedent it would perpetuate might adversely affect implementation of the village center concept which is central to the land use strategy of the Puna CDP. Therefore, we strongly urge you to forward . . . with a **negative** recommendation for approval” (**Planning Department Exhibit 11 – March 14, 2013 Letter to Planning Director** (emphasis in original).

39. **Hawaiian Paradise Park Owner’s Association** noted that Applicant Rodney Diamond appears to be very conscientious about keeping his fuel storage in proper condition and that the HPPOA board had no objection to the application. Email from HPPOA Board President, dated May 22, 2013.

40. No responses were received from: **State Land Use Commission, Office of Planning and Department of Agriculture.**

41. Applicants are involved in diversified agriculture on the subject property and other properties. The residential portion of the property includes two greenhouses and a tilapia pond, and is planted (using imported soil) in royal palms, Samoan coconut, various citrus trees, starfruit, lychee, rambutan and pineapple. Tomatoes, kale, lettuce, cucumbers, squash, other vegetables and herbs are grown in the greenhouses. The produce and fish are consumed by the Applicants. Applicants raise oil palms on 20 acres in Kea'au for biofuel, using equipment and supplies stored and maintained at the subject site. The majority of water wells drilled by Applicants have been for agricultural irrigation or a combination of irrigation and residential uses. There's no county water service in most areas which they serve.

42. Applicants began working with a driller who parked his drill rig on their lot back in January 2001. Applicants got their own drill rig in 2004. Since then, they've done over 270 wells, about 30 per year, including one for water bottling in Shipman Industrial Park. Applicants schedule drilling so that they can do multiple jobs in the same area without transporting the rig back and forth. Thus, the rig is out at work sites for weeks or months at a time. This reduces mobilization traffic, and allows cost of mobilization to be shared among multiple clients.

43. In 2002, Applicants contacted the County Planning Department by telephone to ask if storing the drilling rig, parts, equipment and materials on the subject site (as being requested in the subject application) was permissible. They spoke to someone at Planning named "Billy" who told Applicants that he felt there would be no problem with their use as explained, that it was akin to parking a school bus on the property and driving it out to work daily. The use of the property being requested in the subject application is substantially the same type, scope and intensity as was described to the Planning Department in 2002.

44. In 2005, in reliance on the verbal advice from Planning Department, Applicants built the existing workshop/garage structure, approximately 1,200 square feet in area, as a “carport” under County building permit. Further additions were built for cover for trucks, tractor, other equipment and supplies, and including a fuel tank containment area. As represented by the applicants, these existing structures are about 80% permitted, and plans have been prepared to seek permitting of the remaining structures. No new structures will be erected. Maintenance and repair work will be limited to Applicants’ own machinery and equipment. Water pumps to be repaired will be picked up and dropped off at client’s property. There will be no walk-in repairs, or wholesale or retail sales from the site. Most of Applicants’ business is done by email or telephone.

45. Applicants have been staging one or two drill rigs on their property since 2001, and acquired and parked their own drill rig since 2004. This predates the Puna CDP (2008) and the Hawaiian Paradise Park Community Master Plan Revision of September 2005 (not officially adopted). The main permitted existing workshop/garage structure (2005) predates the Puna CDP and was built the same year as the HPP Master Plan Revision was revised.

46. Diesel fuel, motor and hydraulic oil, and driller’s oil (approved by state Department of Health), are all in approved storage containers, housed in a secondary containment with capacity of 125% of stored volume. If all such liquids were spilled, they would still be held within the secondary containment. Applicants have engaged an engineering firm to design the fire control measures required by the Fire Department.

47. All adjacent parcels surrounding the subject property are zoned A-1a and are either vacant, in residential use, or in residential use with light agricultural use. Adjacent parcels to the north and south are vacant. Single-family residences occupy adjacent parcels to the east

and west. None of these neighboring owners/occupants, or owners/occupants on 32<sup>nd</sup> street oppose the application, or spoke of significant adverse impacts from the proposed and existing uses. At the June 6, 2013 hearing, there was one area resident testifying in support of the application, none against it. The testifier spoke of the need for Applicants' services for agricultural and residential uses in the HPP area and other Puna subdivisions without County water service. Reliable water service is essential to irrigation, hydroponics, aquaculture, and many other forms of agricultural uses, as well as for residential uses, and commercial/industrial uses such as those proposed for 33<sup>rd</sup> Avenue.

48. The Commission appreciates the concerns voiced by the Puna CDP Action Committee, which concerns have helped inform the Commission's inquiry into the proposed use. Concerns about storage and use of flammable and possibly hazardous materials can be reasonably addressed by requiring compliance with all governmental regulations, including but not limited to fire prevention and control requirements of the Fire Department, based on the Uniform Fire Code. The Applicant has already installed a secondary containment for 125% of the volume of flammable and potentially hazardous liquids stored. The State Department of Health has found no wastewater/environmental health concerns with the application, and has noted applicable regulations for control of noise, air pollution and fugitive dust control.

49. To the extent that any of these Findings of Fact constitute conclusions of law, they shall be so considered and construed.

50. The Planning Commission has considered all proposed Findings of Fact offered by each party. The intent of all proposed findings consistent with the findings of fact herein are incorporated herein, with the specific language herein to govern. All proposed findings inconsistent with or contrary to the findings herein are rejected.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Commission makes the following

### Conclusions of Law:

1. In Neighborhood Board v. State Land Use Commission, 64 Haw. 265, 639 P.2d 1097 (1982), the Hawai'i Supreme Court stated that:

Hawai'i Revised Statutes ("HRS") 205-6 allows the County Planning Commission and the Land Use Commission to issue special permits for "certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified", "but only when the use would promote the effectiveness and objectiveness of HRS Chapter 205." Whether a particular use is "unusual and reasonable" is determined by applying the five (5) guideline set forth in the Land Use District Regulation & 5-2 to the proposed project. Section 5-2 requires the following:

  - 1) Such use shall not be contrary to the objectives sought to be accomplished by the Land use Law and Regulations.
  - 2) That the desired use would not adversely affect surrounding properties.
  - 3) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvement, and police and fire protection.
  - 4) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.
  - 5) That the land upon which the proposed use is sought is unsuited for the used permitted within the District.
2. Similar guidelines to those set forth in the Neighborhood Board, supra, can be found in Rule 6-3 of the Rules of Practice and Procedure for the Planning Commission of the County of Hawai'i.
3. As explained in Neighborhood Board, supra, at Page 271, the essential purpose of a special use permit, "...is to provide landowners relief in exceptional situations where the use desired would not change the essential character of the district, nor be inconsistent with it."



4. The requested special permit for a drilling company baseyard on the Property complies with the requirements of Chapter 205 and Rule 6-3 of the Rules and Practice and Procedure for the Planning Commission of the County of Hawai'i, and would not significantly change the essential character of the Property being used as a single family dwelling and a baseyard/storage and maintenance facility for off and on-site family agricultural operation as well as the character of the surrounding properties.

5. The Commission has jurisdiction over this Special Permit application pursuant to Hawai'i Revised Statutes Section 205-6.

6. In accordance with Section 25-5-72(a) of the Hawai'i County Code relating to zoning, permitted and allowable uses for this Property, without the issuance of a special permit, include, but are not limited to, vehicle and equipment storage areas that are directly accessory to aquaculture, crop production, game and fish propagation, livestock grazing and livestock production; and buildings and uses accessory to those permitted in that Section.

7. In accordance with Section 25-5-72(c), Hawai'i County Code, uses other than those specifically listed in that section, which meet the standards for a special permit under chapter 205, Hawai'i Revised Statutes, are permitted in the A district, provided that a special permit is obtained for such use.

8. The County of Hawaii General Plan (2005, as amended) (referred to as "the General Plan"), Land Use-Overview, §14.1.1., Introduction And Analysis, regarding the Rural Designation, states in part: "Rural: This category includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. . . . Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area . . ."

9. The General Plan, Land Use – Commercial Developments, §14.3.5.1: PUNA, §14.3.5.1.1 Profile, states: “Commercial activity in the Puna district primarily consists of small rural enterprises that serve the surrounding rural-residential and agricultural communities. . . .”

§14.3.5.1.2 Courses of Action (e) states: “Allow the establishment of small neighborhood commercial areas within existing non-conforming, residential-agricultural (rural) subdivisions.”

10. The General Plan, Land Use: Industrial, §14.4.1 Introduction and Analysis, states in part: “Industrial development includes . . . large storage and transportation facilities . . . and government baseyards. . . . There are two distinct types of industrial development. One sector is service-oriented and is affected by population and the level of activity of other business activities. The other sector, basic industries, is mostly influenced by outside markets. . . . In the case of service-types of industrial development (non-basic), areas designated for industrial uses must be close enough to population and/or commercial areas for efficiencies but still distant enough to avoid traffic problems. . . . A portion of the County’s industrial activity is related to agriculture. . . . Service-oriented industries . . . are located close to population centers. . . . There are three industrial zoning districts within the Zoning Code: General Industrial (MG); Limited Industrial (ML); and Industrial – Commercial Mixed District (MCX). . . . The MCX district allows a mix of some industrial uses with commercial uses. The following areas are identified for industrial – commercial mixed uses: . . . Hawaiian Paradise Park; . . .”

11. The General Plan, Land Use: Industrial, §14.4.3, Policies, states in part: (b) Achieve a broader diversification of local industries by providing opportunities for new industries and strengthening existing industries. (c) Locate industrial areas convenient to transportation facilities, and provide a variety of industrial zoned districts and lot sizes, depending on the needs of the industries and the communities. . . . (f) Provide flexibility within

the Zoning Code to accommodate emerging new industries. (g) Industrial-commercial mixed use districts shall be provided in appropriate locations.”

12. The General Plan, §14.4.5.1 PUNA, 14.4.5.1.2, Courses of Action, states: “(a) Identify sites suitable for future industrial activities as the need arises . . . (b) Industrial-commercial mixed use districts may be provided in appropriate locations.”

13. The General Plan, §14.1.1, Land Use Concepts, Proposed Land Use Pattern, states in part: “The land use pattern is a broad, flexible design intended to guide the direction and quality of future developments in a coordinated and rational manner. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map indicates the general location of various land uses in relation to each other.”

14. The General Plan, § 14.1.4, Standards, states in part: “(a) The designated land uses will be delineated on the General Plan Land Use Pattern Allocation Guide Map. The broad-brush boundaries indicated are graphic expressions of the General Plan policies, particularly those relating to land uses. They are long-range guides to general location and will be subject to: a) existing zoning; and b) State Land Use District. . . .”

15. The Puna CDP, § 5.2.4, Industrial Zoning, states in part:

“ . . . Generally, light industrial uses may not be compatible with some of the village centers, which are mostly located within existing subdivision neighborhoods . . . .

Puna does, however, need more sites for service-type light industrial uses that might not be compatible with the mixed nature of the regional town centers. These service-type uses include . . . . sites for small businesses, and trucking and contractor baseyards. . . .

Although the undeveloped area within Shipman Business Park is very large, it is at some distance from emerging population centers in Hawaiian Paradise Park/Orchidland/ Ainaloa and upper Puna, and there has been a demand for light industrial sites closer to these population centers. This has resulted in special permit applications creating light industrial uses scattered among residential and agricultural lots, rather than planned development. . .

. . . The community development plan proposes that further industrial development should occur on the sites currently designated in the General Plan LUPAG map, plus the following: . . .

-- An area along 33<sup>rd</sup> street in Hawaiian Paradise Park, from Maku`u going toward Kea`au (Fib. 5-3), where several businesses have special permits. This area, which consists of 46 lots of 0.5 to 1.0 acre, should become a light industrial area only if the survey currently being conducted by the Planning Department shows that lot owners want this changed and are willing to fund the infrastructure improvements necessary to create a light industrial area: road improvements, water, and thick landscaping to shield the site from Highway 130 and the residential lots abutting the site.

Industrial development for those sites proposed in the community development plan should have adequate infrastructure, to include road access, water, and landscaping to limit visibility from the highways to emphasize that these sites are to provide services to the residential and agricultural communities.”

16. The 33<sup>rd</sup> Avenue proposed light-industrial area (also referenced in the 2005 proposed revision to the HPP Community Master Plan) has yet to be formally established by the Planning Department, as the community survey they conducted was “inconclusive.” The subject property is located on 32<sup>nd</sup> Avenue, a single street away from this proposed light-industrial area. The General Plan and Puna CDP both recognize the need for light industrial lands in the HPP area. Under the particular circumstances of this case, where a commercial/light industrial use was established after consultation with Planning Department staff, in general consistency with the Rural LUPAG designation, predated the Puna CDP, and is in close proximity to an area proposed for light industrial uses by the Puna CDP, and has been providing well-drilling services well-received and used by the surrounding agricultural and residential uses, and will also support the nearby proposed light industrial area, the Commission concludes that the application is not contrary to the applicable Land use law and regulations.

17. Granting the requested special permit will allow the County to condition the use of the Property and to have greater control over the activities that are conducted on the Property. The evidence does not indicate any significant adverse effects on surrounding properties.

18. The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvement, and police and fire protection. The

relevant agencies did not express any significant concerns regarding undue burdens, and the proposed use, as discussed in the findings above, will not unreasonably burden public agencies.

19. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The General Plan and Puna CDP both recognize the need for light industrial sites in the HPP area, to serve such preexisting subdivisions and the growing need for industrial and infrastructural services such as water wells, to support agricultural and residential/accessory uses in the area. The application would help meet those needs, proximate to an area proposed for light industrial uses.

20. The land upon which the proposed use is sought is unsuited to the uses permitted within the district. As noted in the findings of fact, this rocky pahoehoe land, with little soil, classified as "E" or very poor, is not suited for traditional agriculture. However it is well suited and located for providing accessory water drilling uses in support of agricultural, residential and other uses suitable for the district, as well as enabling hydroponic, aquaculture and other water-intensive non-traditional agricultural uses.

21. The Hawaiian Paradise Park Owner's Association (HPPOA) noted that Applicant Rodney Diamond appears to be very conscientious about keeping his fuel storage in proper condition and that the HPPOA board had no objection to the application.

22. Based on the foregoing findings and conclusions, the proposed use is an unusual and reasonable use under HRS Section 205-6.

23. To the extent that any of these Conclusions of Law constitute findings of fact, they shall be so considered and construed.

#### DECISION AND ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, Application SPP No. 13-000150 for a Special Permit to operate a baseyard for parking, storage and

maintenance of well-drilling equipment, materials and supplies on a 0.43-acre portion of a one-acre parcel is hereby GRANTED, subject to the following conditions:

1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. The life of the permit for the baseyard shall be for ten (10) years from the effective date of this permit.
3. The baseyard operations shall be conducted in substantial conformance with representations made in the application and during proceedings before the Windward Planning Commission.
4. No further subleasing of the property shall occur for baseyard or other business-related activities.
5. Final Plan Approval from the Planning Director shall be secured within six (6) months from the effective date of this permit in accordance with the Zoning Code, Sections 25-2-71(f), 25-2-72, 25-2-76 and 25-2-77. Plans shall identify existing and proposed structures and uses, the number, type and location of stored heavy equipment, fire protection measures, landscaping, signage, parking stalls, driveway and other improvements associated with the uses.
6. The hours of operation for the baseyard operations shall be limited to 9:00 a.m. to 5:30 p.m., Monday through Friday.
7. The applicant shall comply with all applicable laws, rules and regulations of the State and County agencies for this baseyard use.
8. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.

9. An initial extension of time for the performance of conditions, with the exception of Condition No. 2, within the permit may be granted by the Planning Director upon the following circumstances:
- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence.
  - B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
  - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
10. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this permit.

Dated: Hilo, Hawai'i, JUL 18 2013

By Wallace A. Ishibashi Jr  
WALLACE A. ISHIBASHI, JR., Chairman  
Windward Planning Commission  
County of Hawai'i